

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of)	
)	No. 62024-0-I
TAMMY L. BOYER, fka CROSS,)	
)	DIVISION ONE
Respondent,)	
)	
and)	
)	UNPUBLISHED OPINION
HAROLD F. CROSS,)	
)	
Appellant.)	FILED: July 20, 2009
_____)	

AGID, J.—Harold Cross petitioned for modification of his former spouse’s child support obligation. He also requested reimbursement for the overpayment of postsecondary support. Finding that the trial court acted within its broad discretion when it denied Cross’s petition, we affirm.

FACTS

Harold Cross and Tammy Eneix, formerly Tammy Cross, were married in 1982 and dissolved their marriage in 1997. The couple has three children, all of whom are now emancipated. After the dissolution, the parties resolved parenting and support issues primarily through agreed orders.

On October 28, 2005, Cross petitioned for modification of child support. He also filed two separate related motions, including a motion for contempt. On November 28,

2005, the trial court found that Eneix was current in her child support obligation and denied Cross's motion for contempt. The court also entered a temporary support order and referred all remaining support issues to mandatory arbitration.

The arbitrator entered his decision and award on June 15, 2006. The trial court denied Cross's request for a trial de novo as untimely, a decision we reversed on appeal.¹

In January 2008, Cross filed motions to vacate the arbitration award and related orders, to reinstate the temporary support order of November 28, 2005, to enter judgment for allegedly underpaid and unpaid child support, and to require Eneix to pay auto insurance for Collin, the couple's youngest son. The trial court denied the motions, noting that the issues were reserved for trial, which began on April 9, 2008.

At trial, Cross withdrew all claims for relief except: (1) reimbursement for special travel expenses that Eneix allegedly did not use, (2) reimbursement for postsecondary support that he paid for his daughter, and (3) modification of support for Collin. The trial court denied all three of Cross's claims and denied Cross's motion for reconsideration. Because Cross had not improved his position in the trial de novo, the trial court awarded Eneix her reasonable attorney fees and costs.

DECISION

On appeal, Cross challenges only the trial court's denial of reimbursement for postsecondary support and refusal to modify child support for Collin. We review the trial court's decisions in a child support modification proceeding for an abuse of

¹ See In re Marriage of Boyer, noted at 139 Wn. App. 1021 (2007).

discretion.² Consequently, we will not substitute our judgment for that of the trial court, “unless the trial court’s decision rests on unreasonable or untenable grounds.”³

Postsecondary Support

Cross contends the trial court erred in not ordering Eneix to reimburse him for the overpayment of postsecondary support for his daughter, Stephanie. Under the terms of a 2002 support order, Cross and Eneix each agreed to pay one-third of Stephanie’s postsecondary educational expenses as long as she remained a full-time student. In a separate provision, the order specified that support would terminate if Stephanie “no longer resides with [Eneix] and is not attending college.” Cross claims he is entitled to reimbursement of the monthly transfer payments of \$346 that he made from April 2003 through June 2003 because Stephanie failed to attend college for more than a couple of weeks. Cross made no separate payments for Stephanie’s postsecondary education expenses.

Cross relies solely on RCW 26.19.090(3), which specifies that court-ordered post secondary educational support “shall be automatically suspended” if the child is not actively pursuing a course of study. But Cross does not identify any authority limiting the trial court’s discretion to fashion an appropriate remedy if there has been an overpayment.

The trial court’s unchallenged findings establish that because of delays in obtaining financial aid, in part because of Cross’s failure to cooperate, Stephanie did not enroll in the fall 2002 quarter as planned.⁴ Although she enrolled in the winter 2003

² In re Marriage of Schumacher, 100 Wn. App. 208, 211, 997 P.2d 399 (2000).

³ Leslie v. Verhey, 90 Wn. App. 796, 802-03, 954 P.2d 330 (1998), review denied, 137 Wn.2d 1003 (1999).

quarter, she attended classes for no more than two weeks. But Stephanie told Eneix that she was continuing to attend class “and acted in a manner consistent with her continued enrollment and attendance at classes.” When Eneix first learned in March 2003 that Stephanie had not been attending classes, she immediately informed both Cross and the Office of Support Enforcement (OSE). OSE continued support payments until June 2003, when Stephanie moved out of Eneix’s home.

The trial court concluded that under the circumstances, it would be unfair to require Eneix to reimburse Cross for his transfer payment:

Stephanie lied to both parents and committed a fraud upon both parents, but neither parent lied to nor committed a fraud upon the other. Both parents were injured economically by Stephanie’s actions. A cause of action may lie against Stephanie by either parent, but neither parent has a cause of action against the other in connection with the issue of Stephanie’s post-secondary support, as it would be fundamentally unfair to allow either to retroactively seek reimbursement from each other when both have been injured by Stephanie’s fraud.

The trial evidence amply supports the trial court’s determination that Eneix informed both OSE and Cross as soon as she learned that Stephanie was not attending school and that Stephanie, who was living in Eneix’s home at the time, caused economic injury to both Cross and Eneix. Cross does not challenge or even address the trial court’s basis for not ordering reimbursement. He therefore has not demonstrated any abuse of discretion.⁵

⁴ See In re Marriage of Possinger, 105 Wn. App. 326, 338, 19 P.3d 1109, review denied 145 Wn.2d 1008 (2001) (unchallenged findings of fact are verities on appeal).

⁵ See In re Marriage of Krieger & Walker, 147 Wn. App. 952, 199 P.3d 450 (2008) (noting trial court’s discretion in determining limited right of reimbursement for overpayment of child support).

Modification of Child Support

Cross challenges several aspects of the trial court's denial of his petition to modify the child support order for Collin, the couple's youngest son, who was born on July 26, 1988. Under the terms of their 1997 separation contract, Cross and Eneix agreed to continue support until each child had completed high school. On November 28, 2005, shortly after Cross filed his modification petition, the court entered a temporary support order, which set Eneix's monthly support payment for Collin as \$299. As a result of the arbitration, Eneix's support payments increased to about \$334 in 2006 and continued until July 2007.

At trial, which occurred in August 2008, Cross's primary contention was that Eneix's support obligation should be extended beyond July 2007 because Collin had not yet completed his high school degree. The trial court found that Collin became emancipated when he turned 19 on July 26, 2007, and that Eneix's support obligation terminated on that date:

It was appropriate to continue the support obligation for Collin, established by the Temporary Order of Child Support entered in November 2005, beyond the age of 18 in order to enable him to secure either a high school diploma or its equivalent, a GED, but only for so long as Collin made a concerted, consistent effort to secure an education. Collin ceased that effort when he dropped out of school after the winter quarter, 2007, and did not enroll in either the spring or summer quarter of 2007. Collin became 19 years of age on July 26, 2007, during the summer quarter of 2007, and it was appropriate to terminate [Eneix's] child support obligation for Collin on that date, as Collin was emancipated both in law and fact at that time.

In effect, the trial court's decision left undisturbed Eneix's child support obligation

beginning with the November 28, 2005 temporary order, and the court therefore had no need to calculate a continuing or current child support obligation.

On appeal, Cross does not challenge the trial court's refusal to extend Eneix's support obligation beyond July 2007. Rather, he argues the trial court should have retroactively recalculated Eneix's support obligation for the period from the 2005 temporary order to the July 2007 termination date.

Among other things, Cross asserts that Eneix's support obligation was miscalculated because he was not credited for any health insurance premiums that he paid for Collin. But the trial court found that Cross had failed to submit any evidence establishing the amount of health insurance premiums that he had paid solely for Collin. Cross relies on exhibit 31, but that document merely recites the yearly amount of health insurance premiums that Cross paid for his "child(ren)" and does not identify a specific amount for Collin. The record therefore supports the trial court's finding, and Cross has failed to establish any error.

Cross also alleges that the trial court erred in imputing to him a monthly income of \$4,554. But the precise nature of this claim is unclear because the trial court did not

impute income to Cross. Rather, the court found that Cross's monthly income at the time of trial was \$4,554, an amount that was based on a stipulation by Cross's counsel.

Much of Cross's argument is devoted to assertions that the trial court failed to review or consider erroneous and inconsistent entries in various child support worksheets that the parties submitted over the years, including Eneix's income and deductions. He also accuses Eneix's counsel of deceptive and unethical behavior.⁶ But Cross failed to preserve these contentions for review by any meaningful legal argument to the trial court, and he acknowledges that his counsel "did not object at trial about any of the false figures submitted or imputed incomes or state health care insurance paid by appellant." We therefore decline to consider these contentions for the first time on appeal.⁷ Because Cross has failed to demonstrate any error or abuse of discretion, we affirm the trial court's decision.

Eneix requests an award of attorney fees for a frivolous appeal under RAP 18.9(a). We need not reach that issue. She prevailed on appeal, and Cross did not

⁶ Cross also appears to challenge aspects of the arbitration. But that proceeding is not part of the appeal from a trial de novo. See Malted Mousse, Inc. v. Steinmetz, 150 Wn.2d 518, 528, 79 P.3d 1154 (2003).

⁷ See RAP 2.5(a); In re Marriage of Burch, 81 Wn. App. 756, 761, 916 P.2d 443 (1996) (refusing to consider challenge to health care credit in child support calculations for the first time on appeal). Although Cross arguably raised a few somewhat similar claims for the first time in his motion for reconsideration, he has not demonstrated any abuse of discretion in the trial court's denial of that motion. See JDFJ Corp. v. Int'l Raceway, Inc., 97 Wn. App. 1, 7, 970 P.2d 343 (1999).

improve his position at this level of court. She is therefore awarded fees under MAR 7.3.

Affirmed.

Ajid, J.

WE CONCUR:

Dwyer, A.C.J.

Schindler, C.J.